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Friday, October 20, 2000

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In re

JOSEPH COSIO-BARRON,

No. 90-10820

[Debtor](#)  (s).

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WILLIAM WALTERS,

[Plaintiff](#)  (s),

v.

A.P. No. 00-1176

JOHN WARNER, et al.,

[Defendant](#)  (s).

Memorandum re Remand

Debtor Joseph Cosio-Baron filed a [Chapter 7 bankruptcy petition](#) a decade ago. The case was concluded in 1991. In those proceedings, a nondischargeable judgment was entered against Cosio-Barron in an [adversary proceeding](#) brought by William Walters. In 1999, Walters assigned the uncollected judgment to Andrew Musaelian. He proceeded to levy against three cars he alleged were owned by Cosio-Barron. After considerable wrangling and while an appeal was pending, Musaelian and Cosio-Barron reached a settlement which finally resolved the entire case. Shortly after the settlement, plaintiff William Walters re-appeared. He moved the court for an order revoking his assignment to Musaelian. On July 7, 2000, this court held a hearing in which it ruled that it would abstain from hearing the dispute between Walters and Musaelian. As the court explained at the time:

This is not about [discharge](#) of debt. This is not about any estate's right. It's just a private dispute with no public interest whatsoever. . . . From a jurisdictional standpoint, between Dr. Walters and Musaelian, I don't have any jurisdiction over that. That is not in any way, shape or form arising out of or related to the bankruptcy.

On July 28, 2000, the court entered its order of abstention. It maintained the status quo for a brief time while Walters commenced a state court action, and left the door open to future proceedings in this court only if the state court ruled that Musaelian had exceeded his authority under the assignment when he agreed to the settlement with Cosio-Barron.

Walters filed his state court suit on July 14, 2000. All of the actions alleged in the complaint took place nine years after the end of the bankruptcy case. Except for Cosio-Barron himself, none of the defendants were debtors in bankruptcy. Cosio-Barron's allegedly improper conduct took place ten years after he filed his petition and nine years after his discharge.

On August 14, 2000, Musaelian and John Warner, attorney for Cosio-Barron, removed the matter to federal district court on the basis of alleged diversity jurisdiction. When the district court rejected that argument, Musaelian and Warner attempted to argue bankruptcy jurisdiction. The district court then transferred the matter to this court. As the court has repeatedly explained to all parties, there is no bankruptcy jurisdiction over this dispute. It does not involve the [bankruptcy estate](#). It does not involve the debtor's discharge rights. Only one of the six defendants has ever even been a debtor in bankruptcy, and his alleged conduct is in no way protected by his discharge. This is not a case a bankruptcy court may properly hear. *In re Hunter*, 66 F.3d 1002, 1005 (9th Cir.1995).⁽¹⁾ Even if the court could hear it, there is no sound basis for it to do so. There is no public interest in this dispute. It involves only state law. Its relation to the 10-year-old bankruptcy, as disingenuously argued by Warner, is beyond tenuous. The matter can be timely adjudicated in state court.

Abstention would be mandatory pursuant to 28 U.S.C. § 1334(c)(2). Even if the court had jurisdiction, and even if abstention was not mandatory, this court would still abstain pursuant to 28 U.S.C. § 1334(c)(1) for the reasons set forth above. Given this court's prior rulings and the lame attempt to establish diversity jurisdiction, the removal was clearly not done in good faith. However, a finding of bad faith is not necessary to justify an award of attorneys' fees and costs. *Moore v. Permanente Medical Group, Inc.*, 981 F.2d 443, 446 (9th Cir. 1992). In this case, it appears entirely appropriate to award Walters his claimed fees and expenses of \$2,642.45.⁽²⁾ For the foregoing reasons, the court will remand the matter back to state

court, with an an award of fees and costs in the amount of \$2,642.65. A separate order will be entered.

Dated: October 20, 2000

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#) 

1. In fact, the court may not even have had jurisdiction to enforce its judgment. See "Enforcing Nondischargeable Money Judgments: The Bankruptcy Courts' Dubious Jurisdiction," 74 Am.Bankr.L.J. 115 (2000). At least, however, that was part of the original dischargeability case and not an independent action.

2. The amount claimed is so eminently reasonable that a further hearing regarding the amount is not warr

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